



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,032	11/30/2000	Jeffrey Kent Fredenburgh	JJ-10 072-IUS	99,78

7590

09/24/2003

John C Jeffrey
Macbeth & Johnson
13 Richmond Street West
Suite 301
Toronto, ON M5H 2L7
CANADA

EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 09/24/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,032

Applicant(s)

FREDENBURGH ET AL.

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 21-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1651

DETAILED ACTION

Claims 1-32 are pending.

Claims 21-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on December 6, 2002, was received. The submission is in compliance with the provisions of 37 CFR 1.97.

Accordingly, the information disclosure statement is being considered by the examiner.

Response to Amendment

The amendment filed June 26, 2003 has been received and entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly amended terminology "soft surface" is not described in the specification. Applicants do not have the support required for such broad terminology in which to adequately describe and define the

Art Unit: 1651

claimed invention as newly claimed. Applicants are invited to point out in the specification wherein such broad support can be discovered for a soft surface as newly claimed. The language is considered to be new matter and should be removed unless adequate original support in the disclosure as originally filed for such broad language can be provided by Applicants.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-20 are rendered vague and indefinite for the language "a soft surface" wherein such meaning is not well supported by the instant disclosure. The terminology is indefinite and vague as to what it is intended to encompass and mean in the claims. The metes and bounds of the claims can not be determined.

Further, varied uses of the term "surface" continue to lack antecedent basis throughout the claimed subject matter. For example, in claim 1, at line 6, wherein the first occurrence of the term "surface" lacks antecedent basis in the claim. Also the term further renders the claims indefinite since it is uncertain whether a "soft surface" or "hard surface" is intended because the usage of the term "surface" without proper antecedent basis is further complicated by the introduction of the newly added "a soft surface" which is not supported in the instant specification. Also inconsistent uses of "the dormant bacteria" and "the preparation of the dormant bacteria" render the claims indefinite since it is uncertain whether the two are intended to be the same or have different meaning in the claims.

Claim Rejections - 35 USC § 103

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al. in view of WO 97/43385, Horney et al. , Blyth et al and Vinod, all cited of record, in the previous Office Action of March 27, 2003.

Claims are drawn to a method and composition for controlling odor associated with deposits of organic material which can cause odors on a soft surface, the method comprising applying the composition comprising dormant bacteria and adhering agent(s). The adhering agent can be stain-blocking chemicals or fluorochemicals. Further, the composition optionally includes sodium bicarbonate or molecular sieves. Also the stain-blocking agents can be varied sulfonated polymers (see claims 9 and 18).

Lin et al teach protected spore formers as the desired bacteria of which are of the genus Bacillus (B.) and include species B. laevolacticus, B. pasteurii and B. amyloliquefaciens. Note col. 3, lines 19-21 and col. 4, lines 40-65. Further, the cell counts are within 10^6 to 10^8 range, note col.s 5-6, lines 35-40. *See prior action for further teaching of Lin.*

WO Patent, cited above, teach method and composition for controlling odor for soft surfaces and hard surfaces using microbial enzymes and sulfonated surfactants, anti-soil agents (pages 32-33, all lines), sodium carbonate (page 56, line 20), bicarbonates (page 30, line 33), condensation polymers (page 12, lines 20-35).

Horney et al teach method and composition for controlling odor for soft surfaces using Bacillus bacterial agent and other additives as necessary. Bacillus megaterium is specifically disclosed. Note col. 2, lines 30-50 and see the abstract. Also note col. 3-4, all lines.

Art Unit: 1651

Each of Blyth et al. and Vinod teach method and composition for controlling stains on soft surfaces comprising applying stain blockers and fluorochemicals. Specifically note Vinod, at col. 6, lines 45-65; and note abstracts of both references.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the disclosure of Lin, WO Patent, Horney, Blyth and Vinod in order to provide for a method and composition for controlling odor. Each of Lin, WO Patent and Horney teach deodorizing using bacterial agents and their products (i.e. dormant spores, enzymes, etc.) To select for dormant bacteria to control and provide for a composition for odor control is clearly taught. To combine the dormant bacteria with adhering agents is also disclosed wherein surfactants will adhere organic deposits and thus, function as an adhering agent. Other adhering agents and/or trapping agents or neutralizing agents such as bicarbonate (i.e. sodium bicarbonate), are disclosed. Specifically stain-blockers and fluorochemicals are well known in the art to be useful for treating soft surfaces and to add them to dormant bacteria is clearly within the purview of an ordinary artisan. Horney clearly teaches additives to dormant bacteria is well known. The bacterial counts useful are disclosed. The specific adhering agents are disclosed. To combine the two is clearly an obvious modification of the cited prior art. Thus the claims are prima facie obvious over the newly applied art rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above. Therefore, the claims are properly rejected.

The references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

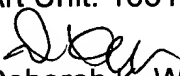
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.

Application/Control Number: 09/726,032

Page 7

Art Unit: 1651


Deborah K. Ware
September 20, 2003



DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651